BEFORE THE ARIZONA STATE BOARD OF RESPIRATORY CARE EXAMINERS

2	In the Matter of:)	CASE NO.	C003806-18-007113
3	BRIAN C. SHELLEY, RCP)		
4	Holder of License No. 007113)	001.021.1	AGREEMENT AND ARY ORDER
5	For the Practice of Respiratory Care)	DISCH EIN	INT ORDER
6	In the State of Arizona)		

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CONSENT AGREEMENT

RECITALS

In the interest of a prompt and judicious settlement of the above-captioned matter before the Arizona State Board of Respiratory Care Examiners ("Board") and in the interest of protecting the people of the State of Arizona, consistent with the statutory requirements and responsibilities of the Board pursuant to A.R.S. § 32-3501, et seq. and A.R.S. § 41-1092.07 (F)(5), Brian C. Shelley, RCP ("Respondent"), holder of license number 007113 to practice respiratory care in the State of Arizona, and the Board enter into the following Consent Agreement for Findings of Fact, Conclusions of Law, and Disciplinary Order for Decree of Censure ("Consent Agreement") as the final disposition of this matter.

- 1. Respondent has the right to consult with an attorney prior to entering into this Consent Agreement. Respondent has read and understands this Consent Agreement as set forth herein, and has had the opportunity to discuss this Consent Agreement with an attorney or has waived the opportunity. Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative hearing.
- 2. Respondent understands that he has a right to a public administrative hearing concerning each and every allegation set forth in the above-captioned matter, at which time Respondent could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all rights to such an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review, or any other administrative, and/or judicial action concerning the matters set forth herein. Respondent

affirmatively agrees that this Consent Agreement shall be irrevocable and any modifications to this original document are ineffective and void unless mutually approved by the parties in writing.

- 3. Respondent agrees that the Board may adopt this Consent Agreement or any part of this agreement under A.R.S. §§ 32-3552 and 32-3553. Respondent understands that the Board may consider this Consent Agreement or any part of it in any future disciplinary action against him.
- 4. Respondent understands that this Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, *if any*, and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future investigation, action, or proceeding.
- 5. All admissions Respondent makes in this Consent Agreement are made solely for the final disposition of case number C003806-18-007113, and any related administrative proceedings or civil litigation involving the Board and Respondent. Respondent further understands that acceptance of the Consent Agreement does not preclude any other agency, subdivision, or officer of this state from instituting other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.
- 6. The Consent Agreement shall be subject to adoption by the Board and shall be effective only when signed by the Chairperson of the Board or the Executive Director of the Board, on behalf of the Chair. In the event that the Board does not adopt this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party. The parties agree that if the Board rejects this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its review and discussion of this document or any other records relating thereto.
- 7. Respondent understands that a Decree of Censure constitutes disciplinary action.
 Respondent further understands that any disciplinary action taken against a licensee by the Board must be reported to the National Practitioner Data Bank, in accordance with federal regulations.

- 8. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board.
- 9. Respondent understands that any violation of this Consent Agreement could be grounds for further disciplinary action by the Board pursuant to A.A.C. R4-45-214(3).

FINDINGS OF FACT

- 1. The Arizona State Board of Respiratory Care Examiners is the duly constituted agency for licensing and regulating of the practice of respiratory care in the State of Arizona pursuant to A.R.S. § 32-3501, et seq.
- 2. Brian C. Shelley, RCP, is the holder of License Number 007113, which enables him to practice respiratory care in the State of Arizona.
- Respondent has been licensed to practice respiratory care in the State of Arizona since September 2005 and Respondent's license to practice respiratory care is active until May 14, 2019.
- 4. Under A.R.S. § 32-3501, *et seq.*, the Board possesses jurisdiction over the subject matter and over Respondent as a licensee of the Board.
- 5. On August 18, 2017, the Board received a complaint alleging that Respondent had been accused of sexually assaulting a female employee on August 7, 2017.
- 6. Respondent denies the allegations of sexual assault but admits he was engaged in two year long relationship with the employee until June 2017 and had engaged in inappropriate sexual conduct in the workplace. Respondent further admits that he improperly used his supervisory position to show favoritism toward the employee. Specifically, Respondent kept the employee on a PRN schedule with full-time hours, which pays more than that of an actual full-time employee. Respondent also moved the employee into a central venous catheter specialist position she may not have been qualified for after Respondent declined to interview any other applicants. Respondent then created a mid-shift position specifically to provide the employee with a shift differential and did not interview any applicants for that position either.

 Respondent resigned from his position as Cardiopulmonary System Director, effective August 15, 2017.

CONCLUSIONS OF LAW

- The conduct described in the Findings of Fact constitute grounds for disciplinary action pursuant to A.R.S. §§ 32-3552(A)(3) and violate the provisions of A.R.S. § 32-3501(9)(g), which states, "Immorality or misconduct that tends to discredit the respiratory therapy profession."
- 2. The conduct described in the Findings of Fact constitute grounds for disciplinary action pursuant to A.R.S. §§ 32-3552(A)(3) and violate the provisions of A.R.S. § 32-3501(9)(k), which states, "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter."
- 3. The conduct described in the Findings of Fact constitute grounds for disciplinary action pursuant to A.R.S. §§ 32-3552(A)(3) and violate the provisions of A.R.S. § 32-3501(9)(1), which states, "Failing to report to the board an incident or incidents which appear to show the existence of a cause for disciplinary action or that a licensed respiratory care practitioner is or may be professionally incompetent or is or may be mentally or physically unable to engage safely in the practice of respiratory care."



Brian C. Shelley, Respondent

Dated: 1-16-2018

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT License No. 007113, held by Brian C. Shelley, RCP, shall be CENSURED. This Decree of Censure constitutes an official action against the license held by RCP Shelley.

ARIZONA STATE BOARD OF RESPIRATORY CARE

1	1 SEAL		
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3	DATED THIS 220 DAY OF JANUAR	RY, 2018.	
4	4 Original Disciplinary Order for Decree of		
5	5 Censure filed this 2200 day		
6	6 of January 2018 with the:		
7	7 Arizona Board of Respiratory Examiners 1400 West Washington, #200		
8	Discosion A.7 95007		
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10	electronic, and regular mail this day of January 2018 to:		
11	Brian C. Sheney, 1001		
12	2 Address on Record		
13	Copy of the foregoing sent by inter agency and electronic mail this		
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15	The state of the s		
16	1275 W. Washington		
17	7 Phoenix, AZ 85007		
18	8 Frankie Shinn-Eckberg, AAG Office of Arizona Attorney General		
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